

**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE**

NATIONAL BEEF PACKING COMPANY, L.L.C., and  
NATIONAL CARRIERS, INC.,

Appellants,

v.

ZURICH AMERICAN INSURANCE COMPANY,

Respondent.

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**DOCKET NUMBER WD72267**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** March 15, 2011

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**APPEAL FROM**

The Circuit Court of Jackson County, Missouri  
The Honorable Robert M. Schieber, Judge

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**JUDGES**

Division One: Pfeiffer, P.J., and Newton and Ahuja, JJ.

CONCURRING.

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**ATTORNEYS**

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## MISSOURI APPELLATE COURT OPINION SUMMARY

### MISSOURI COURT OF APPEALS, WESTERN DISTRICT

NATIONAL BEEF PACKING  
COMPANY, L.L.C., and NATIONAL  
CARRIERS, INC.,

Appellants,

v.

ZURICH AMERICAN INSURANCE  
COMPANY,

Respondent.

OPINION FILED:  
March 15, 2011

WD72267

Jackson County

Before Division One Judges:

Mark D. Pfeiffer, Presiding Judge, and  
Thomas H. Newton and Alok Ahuja, Judges

National Beef Packing Company, L.L.C., and National Carriers, Inc. (collectively "National"), appeal from the judgment of the Circuit Court of Jackson County granting Zurich American Insurance Company's ("Zurich") motion for summary judgment and denying National's summary judgment motion as it relates to the interpretation of an insurance policy issued by Zurich to National. Finding no error, we affirm.

The parents of a young woman sued National in a Texas trial court for causing her untimely death in an automobile/tractor trailer accident. Zurich, at National's request, paid its policy limits to fund a settlement for the mother's claims. That settlement released both Mother's individual claims and her claims as a representative of the estate. After the father amended his petition to assert a claim on behalf of the estate, a dispute arose as to whether the settlement with mother had the effect of releasing all the claims of the estate. Ruling on competing summary judgment motions, the Texas trial court ruled that the mother's individual and estate claims were settled but that Father's claims, including a claim on behalf of the estate, could be pursued. Father obtained a judgment and National appealed to the Texas appellate courts. Prior to a ruling on the Texas appeal, National settled with Father and dismissed the Texas appeal. National sought contribution from Zurich for legal fees incurred leading up to the settlement with the father. Zurich sought and was granted a motion for summary judgment

finding that its duty to defend ended upon National's demand for payment by Zurich (and Zurich's corresponding payment) of the policy limits to fund the settlement with the mother.

**AFFIRMED.**

**DIVISION ONE HOLDS:**

In its central argument on appeal, National contends that Zurich's payment of its policy limits did not release it of its duty to defend as a matter of law because Zurich's payment of the policy limits was not payment of a settlement that released National. We disagree. In Missouri, an insurance company can be released from a duty to defend when they exhaust their policy limits in good faith settlement with one or all of the plaintiffs to a suit against the insurer's insured. It is undisputed that Zurich, in good faith, exhausted the insurance contract's policy limits by "payment" of \$2 million no later than December 13, 2006. As a matter of law, Zurich's "payment" was made in "settlement" of Mother's claims against National, both individually and as a representative of the estate. As a matter of law, Zurich had no further duty to defend National in any continuing liability litigation after December 13, 2006. We affirm.

**OPINION BY:** Mark D. Pfeiffer, Presiding Judge

March 15, 2011

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